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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

Geographic Partitioning and Spectrum
Disaggregation by Commercial Mobile
Radio Service Licensees

WT Docket No. 96-148

Implementation of Section 257 of the
Communications Act —
Elimination of Market Entry Barriers

GN Docket No. 96-113

To: The Commission

COMMENTS OF
THE RURAL TELECOMMUNICATIONS GROUP

The Rural Telecommunications Group ("RTG"), by its attorneys, hereby respectfully submits these Comments in response to the *Report and Order and Further Notice of Proposed Rulemaking ("R&O and FNPRM" or "FNPRM")*, released by the Federal Communications Commission ("FCC" or "Commission") on December 20, 1996, in WT Docket No. 96-148. These Comments oppose the proposal to eliminate the exclusive right of rural telephone companies to acquire partitioned General Wireless Communications Services ("GWCS") licenses and seek to ensure that disaggregation of cellular spectrum remains purely voluntary.

I. STATEMENT OF INTEREST

RTG is an organized group of rural telephone companies whose purpose is to advocate on behalf of rural telecommunications providers ("rural telecom providers"). Many of RTG's members participate in the provision of cellular services to suburban and rural areas and all of

RTG's members are interested in GWCS as a wireless option for the provision of fixed and mobile telecommunications services.

II. DISCUSSION

A. THE COMMISSION'S GWCS PARTITIONING PROPOSAL CONTRAVENES SECTIONS 309(j)(3)(A) AND (B) OF THE COMMUNICATIONS ACT AND SHOULD BE REJECTED

Section 309(j)(3)(A) of the Communications Act of 1934, ("Communications Act") states that the Commission is charged with promoting "the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays."¹ One of the ways in which the Commission has implemented this directive is by adopting partitioning schemes that favor rural telephone companies by providing them with the exclusive right to partition licenses that they otherwise would be unable to obtain, due to the prohibitive cost of spectrum dispensed through auctions. The Commission established partitioning schemes based on its recognition that existing infrastructure makes rural telephone companies well-suited to introduce new telecommunications services rapidly to rural America. These sparsely populated and rugged areas are generally less profitable to serve for companies without existing infrastructure.²

¹ 47 U.S.C. § 309(j)(3)(A) (emphasis added).

² See *In re Implementation of Section 309(j) of the Communications Act — Competitive Bidding, Fifth Report and Order*, 9 FCC Rcd 5532, 5597-99 (1994) ("Fifth R&O").

The Commission initially selected the same partitioning scheme for GWCS that the Commission originally adopted for broadband personal communications services ("PCS").³ The broadband PCS partitioning rules obligated rural telephone companies to negotiate for partitioned areas that "include all portions of the wireline service area of the rural telephone company applicant that lies within the PCS service area," and required that the partitioned area be reasonably related to rural telephone companies' wireline service areas.⁴ These particulars of the broadband PCS partitioning rules helped to ensure that even the most remote rural telecom subscribers could expect to receive the newest and most innovative services on par with their urban peers.

RTG wholeheartedly supported this well-reasoned partitioning plan for GWCS as a means of delivery of interactive voice, video and data services, among other things, to rural Americans, because the plan capitalizes on the inherent value of the incumbent rural telecom provider and its existing infrastructure and ensures service to rural America. Unfortunately, the Commission is now proposing to adopt the revised partitioning scheme outlined in the Report and Order portion of the *FNPRM*, which eliminates the exclusive right of rural telephone companies to enter into partitioning agreements, and eliminates the requirement that partitioned licenses cover a specified service area.⁵

³ See *In re Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, Second Report and Order*, ET Docket No. 94-32, (released August 2, 1996) at ¶105.

⁴ *Fifth R&O*, 9 FCC Red at 5598.

⁵ *R&O and FNPRM* at 9-27.

By proposing to eliminate the exclusive partitioning arrangement between rural telecom providers and GWCS licensees, the Commission is opening the door for entities who have no desire or plans to serve rural areas to acquire spectrum in geographic areas that include rural areas, and then hold such rural areas hostage based on the economic infeasibility of serving such areas. These entities may be able to strike more lucrative partitioning deals for GWCS licensees by offering to acquire a larger geographic area, thereby reducing the number of partitioning deals a GWCS licensee will need to negotiate and consummate. But such arrangements offer less guarantee to the rural public that delivery of service will be rapid or that service will reach them at all. Any non-rural telephone company has the burden of creating the necessary infrastructure to reach low-density population areas and persons situated in remote and/or rugged terrain or harsh climates. The creation of this infrastructure involves the investment of considerable time and money, and a high likelihood that all persons seeking delivery of the service will not be able to receive it. Unlike a rural telephone company, a non-rural telephone company does not have the incentive to undertake the responsibility of ensuring that the rural areas of the country receive quality, innovative GWCS services, like educational and medical interactive video services, in a timely manner.

Rural telecom providers clearly have an advantage in speeding new services to their customers by virtue of their existing wireline facilities (e.g., towers, poles, conduits, switches, and personnel). But as RTG explains in Section B, GWCS licensees will be unwilling to negotiate with rural telephone companies. Instead, under the current proposal, larger companies who are not rural telephone companies will acquire large geographic areas and

proceed to provide service to only highly populated areas. Rural America will thus remain unserved as there is no incentive for these larger companies to serve high cost areas.

B. ELIMINATING RURAL TELECOM PROVIDERS' EXCLUSIVE RIGHT TO RECEIVE PARTITIONED GWCS LICENSES SIGNIFICANTLY DIMINISHES THE ONLY REMAINING DESIGNATED ENTITY PREFERENCE THEY RECEIVE

Section 309(j)(3)(B) of the Communications Act calls for the Commission to promote economic opportunities for a variety of telecommunications providers, including rural telephone companies.⁶ Of the types of entities named — small businesses, rural telephone companies, and minority- and female-owned businesses — rural telephone companies receive the least amount of assistance from the Commission with regard to the acquisition of licenses. Rural telephone companies are frequently and erroneously characterized as being in stronger financial positions than they truly are, and they are routinely excluded from the various small business definitions continually revised by the Commission.⁷

⁶ 47 U.S.C. § 309(j)(3)(B).

⁷ See e.g., *In re Implementation of Section 309(j) of the Communications Act — Competitive Bidding, Fourth Report and Order*, 9 FCC Red 2330, 2336 (1994) where the Commission initially adopted a small business definition for the Interactive Video and Data Service ("IVDS") of net worth not exceeding \$6 million and after tax profit not exceeding \$2 million; See also *In re Implementation of Section 309(j) of the Communications Act — Competitive Bidding, Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 10 FCC Red 175, 196 (1995); *MDS Report and Order*, 10 FCC Red 9589, 9671-72 (1995); *In re Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service, Report and Order*, 10 FCC Red 9589, 9671-72 (1995); *In re Amendment of the Commission's Rules Regarding the 37.0-38.6 GHZ and 38.6-40.0 GHZ Bands, Notice of Proposed Rulemaking and Order*, ET Docket No. 95-183 (released December 15, 1995), where the Commission applied a definition of annual gross revenues of no more than \$40 million for the three preceding years for both narrowband and broadband

In the specific context of the GWCS, the Commission stated that the "provision for partitioning" and the ability to "benefit from the use of . . . existing infrastructure" contributed to the Commission's belief that "special preferences are [not] needed to ensure the adequate participation of rural telephone companies . . . in the bidding for [GWCS] licenses."⁸ The Commission's effort to satisfy the statute's directive that it ensure that rural telecom providers have an opportunity to participate in the provision of spectrum-based services is manifested entirely in the current Section 26.209 of the Commission's rules, which states in pertinent part:

[A]n applicant that is a rural telephone company, as defined in § 26.4, may be granted a GWCS license that is geographically partitioned from a separately licensed EA, so long as the EA applicant or licensee has voluntarily agreed (in writing) to partition a portion of the license to the rural telephone company.⁹

PCS, and Multipoint Distribution Service ("MDS"), and proposes the same definition for 37 GHz spectrum. Additionally, for the Broadband PCS D, E, & F Block Auction, the Commission used \$40 million for small businesses and \$15 million for "very small business." 47 C.F.R. 24.720(b). For the 900 MHz Specialized Mobile Radio ("SMR") services and 800 MHz SMR services auctions, the Commission adopted definitions of gross revenues of \$15 million or less for the three preceding years for small business, and gross revenues of \$3 million or less for the three preceding years for very small business. *In re Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHZ and 935-940 MHZ Bands Allotted to the Specialized Mobile Radio Pool, Second Order on Reconsideration and Seventh Report and Order*, 11 FCC Rcd 2639, 2075-77 (1996); *In re Implementation of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHZ Frequency Band, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking*, 11 FCC Rcd 1463, 1574 (1996) ("800 MHZ SMR Order").

⁸ *In re Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use*, 10 FCC Rcd 4769 (1995) at ¶115.

⁹ To be codified at 47 C.F.R. § 26.209 pending outcome of this proceeding.

If this partitioning scheme is abandoned and replaced with the "liberalized" scheme adopted for broadband PCS and proposed here, then the Commission will have again eliminated all preferences afforded rural telephone companies, while wantonly disregarding its own duties to support rural telecom providers, as mandated by Section 309(j)(3)(B) of the Communications Act.¹⁰

It has been RTG's experience that without the exclusive rural telephone partitioning rule, there is no incentive for a licensee to provide service for or partition to a small rural area. Licensees seeking to partition will seek to save on transactional costs and will attempt to partition to larger companies seeking to acquire larger areas. The other scenario RTG members have experienced is that licensees seeking to eventually merge with or be acquired by larger entities do not want to partition to anyone because it carves up the license area and devalues the market. Accordingly, statements espoused by the Commission and other commenters to the effect that partitioning takes care of rural telephone companies are misguided and misinformed. The current rural telephone partitioning rule both provides rural telephone companies with an opportunity to provide GWCS and places a strong incentive on licensees to partition to entities seeking to provide service to rural areas.

¹⁰ A case is now pending challenging the Commission's decision in this proceeding to eliminate rural telephone companies' exclusive benefit to acquire a partitioned PCS license. *Rural Telecommunications Group v. FCC*, Case No. 97-1077 (D.C. Cir., filed Feb. 5, 1997).

C. CELLULAR SPECTRUM DISAGGREGATION SHOULD BE PERMITTED ON A VOLUNTARY BASIS IN COMBINATION WITH FLEXIBLE PARTITIONING

RTG supports the Commission's proposal to permit cellular disaggregation as long as such disaggregation is permitted on a voluntary basis only. Permitting cellular licensees to disaggregate spectrum whether or not it is in combination with geographic partitioning, would ensure flexible use of the spectrum and place cellular licensees on the same level playing field as their PCS counterparts. By being permitted to disaggregate cellular spectrum, cellular licensees will be able to make PCS acquisitions without running afoul of the FCC's Commercial Mobile Radio Service (CMRS) spectrum cap rule,¹¹ thereby affording maximum flexibility for rural cellular companies to provide all types of CMRS services to rural America. However, RTG is concerned that the FCC only allow disaggregation to occur on a voluntary basis and that disaggregation not be mandated simply because a new entrant contends that it has a better use for the spectrum. RTG seeks assurance from the Commission that any rules adopted pertaining to cellular disaggregation be clearly written to state that disaggregation is purely voluntary.

¹¹ 47 C.F.R. § 20.6.

III. CONCLUSION

Congress recognized that competitive forces alone will not bring new services, like those that could be provided using the GWCS, to rural America. Historically, rural telephone companies have been the only providers of telecommunications services in rural markets because no one else chooses to operate there. Rural telephone companies deserve special consideration and recognition for their dedicated service to those parts of the country that would have otherwise gone without. Congress knows this, and has asked the Commission to ensure that rural Americans and rural telecom providers have opportunities to participate in the advances and innovations occurring in the telecommunications industry. If the Commission adopts the proposals set forth in the *FNPRM*, then rural Americans and rural telecom providers face a barrier to these new horizons, and the Commission will therefore have failed to accomplish the mandate that Congress has set.

Accordingly, RTG respectfully requests that the Commission retain the rural telephone company partitioning scheme for the GWCS, and adopt disaggregation rules for the cellular radio service.

Respectfully submitted,

**THE RURAL
TELECOMMUNICATIONS GROUP**



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